IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11915 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NARSIBHAI M PRAJAPATI

Versus

STATE OF GUJARAT

Appearance:

MR BIPIN P JASANI for Petitioner Nos. 1-12

Mr.K.P. Raval, Assistant GOVERNMENT PLEADER, for Respondent No. 1

Mr.D.D. Vaidya, for Respondent Nos. 2, 3 and 4.

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 10/09/2003

ORAL JUDGEMENT

Rule. Mr.K.P. Raval, learned AGP, waives service of rule on behalf of respondent No.1 and Mr.D.D. Vaidya waives service of rule on behalf of respondents 2,

3 and 4.

With the consent of the parties, the matter is taken up for final hearing today.

By fling this petition, it is prayed that the action of the District Panchayat in effecting recovery of HRA and CLA, by an order dated 21.12.2000, is bad in law. It is also prayed that the petitioners are eligible to get aforesaid benefits at par with Ahmedabad City. It is also prayed that the order of recovery also be quashed and set aside.

The Assistant Agricultural Director, by way of a Circular dated 21.12.2000, came to the conclusion that the concerned employees are not entitled to HRA at the rate prescribed for Ahmedabad City and that whatever excess amount paid is required to be recovered. The said decision is produced at page 29, which is dated 21.12.2000. The petitioner has, therefore, challenged the aforesaid action by way of this petition.

The grievance of the petitioners is that they are entitled to draw HRA at par with the applicable rate for Ahmedabad City and that no order of recovery could have been passed without affording an opportunity of being heard to the petitioners. It is submitted that since the petitioners are residing within the 8 K.Ms. radius, they are entitled to draw H.R.A. applicable to the employees serving in Ahmedabad City. It is submitted that the area in question is in the periphery of AUDA limit.

Learned Advocate, who is appearing for the District Panchayat, submitted that the petitioners are not entitled to the rate at which they were paid HRA initially. It is also submitted that, wrongly, the said benefit was given and, therefore, a decision was taken in view of the audit objection to recover the amount in question.

It is required to be noted that it is not in dispute that the impugned order is passed without giving any opportunity to the petitioners of being heard. Since this aspect is not in dispute, Mr.Vaidya, learned Advocate for respondents 2, 3 and 4, submitted the District Panchayat will pass an appropriate order after hearing the petitioners and the say of the petitioners also will be taken into account at the time of taking final decision. He submitted that such decision will be taken in accordance with law. Under these circumstances, the order in question dated 21.12.2000, annexed as

Annexure 'C', is set aside on the short ground that the same was passed without hearing the petitioners. It will be open for the District Panchayat to pass appropriate order in accordance with law after hearing the petitioners and while doing so, the say of the petitioners also be taken into account at the time of passing the final order. It is clarified that on the main issue this Court has not expressed any opinion and it is for the Authority to decide the same in accordance with law.

It is clarified that in case the ultimate decision is against the petitioners, it will be open for them to challenge the same in accordance with law.

Petition is accordingly allowed in view of what is stated above. Rule is made absolute with no order as to costs.

10th September, 2003 (P.B. Majmudar, J.)

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(apj)